

19<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

**J. ROBERT WOOLEY, COMMISSIONER OF  
INSURANCE FOR THE STATE OF LOUISIANA  
IN HIS CAPACITY AS LIQUIDATOR OF  
AMCARE HEALTH PLANS OF LOUISIANA**

**VERSUS**

SUIT NO. 509,297

**STATE  
FILED**

**FOUNDATION HEALTH CORPORATION,  
FOUNDATION HEALTH SYSTEMS, INC.  
and HEALTH NET, INC.**

\*\*\*\*\*

**MOTION TO CONTINUE HEARING ON EXCEPTIONS**

**NOW INTO COURT**, come plaintiff, J. Robert Wooley, Commissioner of Insurance for the State of Louisiana in his capacity as Liquidator of AmCare Health Plans of Louisiana through his duly appointed Receiver, Marlon V. Harrison (the "Commissioner"), who respectfully requests that the defendants' Declinatory Exception of Lack of Personal Jurisdiction and Peremptory Exception of No Cause of Action, which is currently set for hearing on November 3, 2003 be continued and re-set for hearing on December 8, 2003 for the following reasons to-wit:

1.

Last week, the Commissioner retained Rodolfo J. Aguilar, Jr. and M. Brent Hicks of the law Firm of McGlinchey Stafford, PLLC as additional counsel in this matter.

2.

Simultaneous with the filing of this motion, the Commissioner has filed a motion to enroll Rodolfo J. Aguilar, Jr. and M. Brent Hicks of the law firm of McGlinchey Stafford, PLLC as additional counsel of record.

3.

The Commissioner's new counsel is in need of additional time to adequately prepare for the hearing on the defendant's exceptions.

4.

Counsel for the defendants, Mr. David M. Kerth, has been contacted and does not have an objection to this continuance.

5.

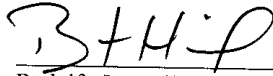
All the parties are available on December 8, 2003 to participate in the hearing.

REC'D C.P.

OCT 28 2003

**WHEREFORE**, the Commission prays that this Motion to Continue be granted and the defendant's Declinatory Exception of Lack of Personal Jurisdiction and Peremptory Exception of No Cause of Action be re-set for hearing on December 8, 2003.

Respectfully submitted:



Rodolfo J. Aguilar, La Bar Roll 1192  
M. Brent Hicks, La Bar Roll 23778  
MCGLINCHAY STAFFORD, PLLC  
9<sup>th</sup> Floor, One American Place  
Baton Rouge, LA 70825  
Telephone: (225) 383-9000  
Facsimile: (225) 343-3076

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served via United States Mail, proper postage pre-paid, on all counsel of record, namely:

James C. Percy, Esq.  
David M. Kerth, Esq.  
JONES, WALKER  
8555 United Plaza Boulevard  
Four United Plaza, Fifth Floor  
Baton Rouge, LA 70809-7000

Baton Rouge, Louisiana, this 17 day of October, 2003.



M. Brent Hicks

**19<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**J. ROBERT WOOLEY, COMMISSIONER OF  
INSURANCE FOR THE STATE OF LOUISIANA  
IN HIS CAPACITY AS LIQUIDATOR OF  
AMCARE HEALTH PLANS OF LOUISIANA**

**VERSUS**

**SUIT NO. 509,297 "D"**

**FOUNDATION HEALTH CORPORATION,  
FOUNDATION HEALTH SYSTEMS, INC.  
and HEALTH NET, INC.**

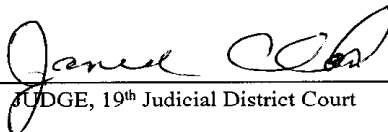
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**ORDER**

Considering the above and foregoing Motion to Continue Hearing on Exceptions;

**IT IS ORDERED, ADJUDGED, AND DECREED** that Foundation Health Corporation, Foundation Health System, Inc., and Health Net, Inc.'s Declinatory Exception of Lack of Personal Jurisdiction and Peremptory Exception of No Cause of Action which is currently set for hearing on November 3, 2003 at 9:30 a.m. be continued and set for hearing on the 8<sup>th</sup> day of December, 2003 at 9:30 a.m.

**THUS DONE AND SIGNED** in Baton Rouge, Louisiana, this 27 day of Oct, 2003.

  
\_\_\_\_\_  
JUDGE, 19<sup>th</sup> Judicial District Court

3103011-00

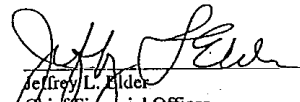
509,297

EXHIBIT

A

**GUARANTEE OF  
FOUNDATION HEALTH CORPORATION** **FYI**  
From Trecla Nienow

This is to certify that Foundation Health Corporation, the sole shareholder of Foundation Health, a Louisiana Health Plan, Inc. ("FHLHP"), guarantees that it shall provide sufficient capital to FHLHP to ensure that FHLHP maintains the minimum amounts of paid capital and surplus required for an HMO under Louisiana law. This guarantee shall remain in place until Foundation Health Corporation provides written notice of its cancellation to the Commissioner of Insurance, State of Louisiana, at least sixty (60) calendars days in advance of the effective date of cancellation.

  
Jeffrey L. Elder  
Chief Financial Officer  
Foundation Health Corporation

12/9/96

State of California

County of Sacramento

On December 9, 1996 before me, Lori Atiyeh, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeffrey L. Elder  
Name(s) of Signer(s)

☒ personally known to me — OR — ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Guarantee of Foundation Health Corporation

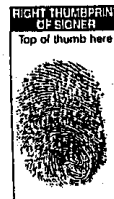
Document Date: December 9, 1996 Number of Pages: one

Signer(s) Other Than Named Above: none

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Jeffrey L. Elder

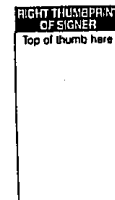
- ☐ Individual
- ☒ Corporate Officer
- Title(s): Chief Financial Officer
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_



Signer Is Representing:  
Foundation Health Corp.

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer
- Title(s): \_\_\_\_\_
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_



Signer Is Representing:  
 \_\_\_\_\_

310301186



ADDRESS SERVICE  
REQUESTED



2000 Dana Drive  
Fountain Valley, CA 92708

ATTN:

14 0000 1000 0000 0000

1000 -1200 -122070 -100000000

RECEIVED

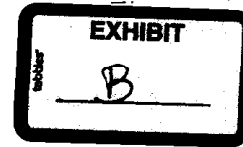
JUL 28 1987

COMM. CF. INS.

Solv  
Department of Insurance, State of Louisiana  
Attn: S. Denise Bugnion, CFE  
Office of Financial Supervisory Administration  
P.O. Box 94214  
Baton Rouge, LA 70804-9214



310301186C



RECEIVED

JUL 28 1997

July 24, 1997

COMMISSIONER OF INSURANCE  
FINANCIAL SOLVENCY

S. Denise Brignac, CFE  
Office of Financial Solvency,  
Administrative Services  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

RE: Foundation Health, A Louisiana Health Plan, Inc. ("the Plan or the Company")

Dear Ms. Brignac:

This letter is in response to the letter dated June 23, 1997 from the Louisiana Department of Insurance ("the Department") regarding eight areas of concern in the Plan's Annual Financial Statement for the year ended December 31, 1996. The Department's comments are included in italics below for your convenience.

1. *On Schedule E of the statement, EDP software in the amount of \$19,162 should be non-admitted.*

Pursuant to Louisiana Insurance Statutes, R.S. 22:855 (11) admitted assets for an insurance company include "Electronic and mechanical machines constituting a data processing and accounting system...". Since the Louisiana Insurance Statutes appear to be silent with respect to software specifically, the Plan has been admitting such software since this EDP software constitutes an integral part of the Plan's data processing and accounting system.

Please advise as to whether the Department's interpretation of the Louisiana Insurance Statutes differs from the Plan's interpretation. ✓ *Accounting practices & procedure manual; chapter 5 other admitted assets. Call their turnover on 8/6/97.*

2. *On Schedule H, a total of \$1,280,761 claims were unpaid over 30 days. Why is such a large amount of unpaid over 30 days?*

In July 1996 the Plan transitioned its claims adjudication function from Baton Rouge to the Foundation Health Systems Regional Service Center in Tulsa, Oklahoma. The transition process included extensive staff training and monitoring, as well as in-depth review of provider fee schedules and contract terms. The primary focus of the Regional Service Center was to achieve payment accuracy. As is typical with claims adjudication transitioning, the inventory levels

Reviewed 8/5  
L.C.

increased. In December 1996, the Regional Service Center began work on an initiative to significantly decrease the claims inventory.

In November 1996, the Plan had 16,501 unpaid claims in the Regional Service Center, including 9,284 over 30 days. In May 1997, the Plan had 3,122 unpaid claims in the Regional Service Center, including 384 over 30 days. Total unpaid claims decreased 81%, and claims over 30 days decreased almost 96%. In November 1996, the Regional Service Center reported that 50.9% of claims were paid within 60 days. In May 1997, the percentage of claims paid within 60 days increased to 96.9%.

It is unrealistic to expect that all claims can be paid within 60 days. Unpaid claims are usually a result of incomplete information received from the provider. For instance, the Plan requires operative reports and other supporting documentation to be attached to certain hospital claims in order to adjudicate the claim appropriately. In addition, claims are received with inaccurate provider demographic information, including discrepancies in address and tax identification numbers. If a claim is received without adequate supporting documentation or with inaccurate information, the claim will be pended and the provider contacted.

Management of the Plan and of the Regional Service Center believe that the Plan's claims inventory is now at an acceptable and sustainable level.

3. On Schedule J, your company reported seven payables to different affiliates. The Description cited for general administrative. The department would like to know what are these payables? Why does your company have that many management companies?

Amounts payable to affiliates at December 31, 1996 were composed of the following:

Foundation Health, A California Health Plan	Office Supplies, Equipment Rental and Mailing Services	\$15,063
Foundation Health, A Texas Health Plan	Labor and shipping	4,343
Foundation Health Medical Group, Florida, Inc.	Wrong check stock used /charged - amount corrected in Jan '97	12,449
Foundation Health PsychCare Services	Capitation	8,131
Occupational Health Services	Capitation	818
Health Management Center, Inc. MASS	Shipping	240
Foundation Warehouse Company	Office Supplies	26,831

As described in the footnotes to the financial statements included in the Plan's Annual Statement, the administration and payment of certain general and administrative expenses are centralized at the Company's parent and at various affiliates and such costs are charged back to the appropriate affiliates. These transactions arise in the normal course of business and are payable on the same terms as equivalent transactions with nonaffiliates. Please note that these are actual incurred general and administrative expenses and not management fees.



Amounts payable to Foundation Health, a California Health Plan, Inc., Foundation Health, a Texas Health Plan, Inc., Foundation Health a Texas Health Plan, Inc. and Health Management Center, Inc. represent charges to the Plan for expenses incurred by the Plan. For instance, the Plan's office supply vendor might invoice a number of affiliates on a single invoice. The California Plan might pay the invoice and charge each of the affiliates for the office supplies received by that affiliate.

The amount payable to the Foundation Health Medical Group, Florida, Inc. and represents correction of an error.

The Plan contracts with Foundation Health PsychCare Services for mental health benefits for the Plan's Members. The amounts payable to Foundation Health PsychCare Services and Occupational Health Services represent capitation payable. The Description column in Schedule J could have more accurately read "capitation payable" or "healthcare services". ✓ o/c

4. *Schedule B, no match was found in NAIC Valuation of Securities database for eleven of the bonds reported (a copy of enclosed). Were these bonds rated by the NAIC Valuation of Security Office?*

Each time the Plan purchases bonds, the Cash Management department is responsible for verifying that such bonds are rated by the NAIC Valuation Of Security Office by checking a listing on CD-ROM provided by the NAIC. If such bonds are not included on this listing, the Cash Management department prepares appropriate forms and submits these forms to the NAIC for rating. There is a time lag between the date the Cash Management department submits information on unlisted bonds and the date that the CD-ROM from the NAIC is updated. If the bonds are not listed on the latest CD-ROM from the NAIC, the Plan values such bonds for quarterly and annual filing purposes based on the Muller Data/TSIS bond valuation service maintained by Bloomberg.

Nine of these bonds were purchased on or before November 13, 1996. On Schedule B of the Plan's Annual Statement, these bonds were valued based on the Bloomberg Muller Data/TSIS database. Please note that these bonds are included on the Security Valuation CD-ROM from the NAIC for the second quarter of 1997.

The remaining two bonds were purchased on December 26, 1996 and December 30, 1996. These bonds were also valued on Schedule B of the Annual Statement based on the Bloomberg Muller Data/TSIS bond valuation service. The Cash Management department is in the process of submitting the appropriate paperwork to the NAIC Valuation of Security Office for valuation. o/c

5. *General Interrogatories #14, a law suit was filed against your company. The department would like to know the development of the suit, and the expected amount of settlement.* ...

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The case, "Marvin Evans vs. Foundation Health, a Louisiana Health Plan, Inc." case no. 96-09-8074-D was a claims dispute alleging violation of Louisiana law in not having timely paid claims. The matter settled on March 21, 1997 for \$947.53. *ok*

6. According to the revised Management Discussion and Analysis Report, \$1 Million, \$2.3 Million and \$3 Million were contributed by the company's parent in February, March and May of 1997. please provide supporting documentation for the amounts received by your company.

Attached are copies of the bank statements showing the dates of the wire transfers as documentation for the capital contributions received from the Company's parent. *ok*

7. According to the Annual Statement, approximately 11.4% of your company's members are state employees. The department would like to know how your company plans to deal with the loss in membership. Also, what are your company's plans to increase profitability?

The Plan's experience with respect to the State of Louisiana group was less than satisfactory. In fact, the Plan's medical loss ratio (the ratio of health care costs to premium revenues) on this group was well in excess of 100%. The loss of this group represented a decision on the part of Plan management not to match the unrealistically low rates offered by two other HMOs. The Plan believes that loss of the State of Louisiana group will actually have a positive impact on the Plan's profitability.

The Plan has established a number of initiatives designed to enhance revenue and control health care costs. Revenue initiatives include growth in membership along with selective rate increases. Health care cost containment initiatives include renegotiation of certain provider contracts, enhanced utilization review and case management procedures, and improved claims review. *ok*

8. The department requests a parental guarantee be executed between Foundation Health Systems, Inc. and Foundation Health, A Louisiana Health Plan, Inc. (Foundation Health), where Foundation Health Systems, Inc. guarantees Foundation Health will meet the statutory net worth requirement as long as foundation Health is a subsidiary of Foundation Health Systems, Inc., or until the HMO dissolves, whichever occurs first. The document must have the following wording: "non-cancelable by any party without the Commissioner's approval". The document must also list the assets pledged to guarantee payment in case need arose to call on the guarantee. The document should waive any defense the guarantor has in not honoring the guarantee.

Please note that a parental guarantee has been executed on behalf of the Plan. On December 9, 1996 Foundation Health Corporation issued a Guarantee which states:

This is to certify that Foundation Health Corporation, the sole shareholder of the Plan guarantees that it shall provide sufficient capital to the Plan to ensure that the Plan

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maintains the minimum amounts of paid capital and surplus required of an HMO under Louisiana Law. This guarantee shall remain in place until FHC provides written notice of its cancellation to the Commissioner of Insurance, State of Louisiana, at least sixty (60) calendar days in advance of the effective date of cancellation.

The Guarantee was signed by FHC's Chief Financial Officer.

At this date, no specific assets of the parent have been pledged with respect to the guarantee issued to the Plan. However, please note that Foundation Health Systems, Inc. is a large company. At March 31, 1997, the pro-forma total assets of Foundation Health Systems, Inc. were \$4.1 billion, including \$1.8 billion in cash and investments.

Attached is a copy of the parental guarantee between Foundation Health Corporation and Foundation Health, A Louisiana Health Plan, Inc. Please note that Foundation Health Systems, Inc. is the sole shareholder of Foundation Health Corporation. *etc*

If you have any questions or concerns, please call me at (916) 631-5093.

Sincerely Yours,

*Susan Moore /  
Shen Zumer-Walton*

Susan S. Moore  
Director of Finance,  
Commercial HMOs

**Buser & Associates**  
A PROFESSIONAL LAW CORPORATION  
1518 Highway 30 East

Gonzales, LA 70737

Phone (225) 644-6100  
Fax (225) 644-6111

Sue Buser ∞ +

Admitted in Louisiana +  
Admitted in Texas ∞

October 28, 2003

Clerk of Court  
19<sup>th</sup> Judicial District Court  
Parish of East Baton Rouge  
P.O. Box 1991  
222 St. Louis St.  
Baton Rouge, LA 70821

Re: J. Robert Wooley, et al v. Foundation Health Corporation, et al  
19<sup>th</sup> JDC# C 509,297 Div:D

Dear Clerk:

Please find enclosed Exhibits A & B which were inadvertently omitted from the filing of the Petition to Enforce Guarantee for Damages and for Equitable Relief. Please enter these two exhibits into the record.

If anything further is needed, please do not hesitate to call.

Sincerely,

Buser & Associates, APLC

BY: Sue Buser

Sue Buser

COST OK Amt.         
OCT 30 2003  
BY         
DY CLERK OF COURT

cc: Mr. David Kerth

RECEIVED  
OCT 30 2003  
SUIT ACCTG.  
19TH JUDICIAL COURT